UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FRANCISCO VIDAL, et al.,

Plaintiffs

vs.

JOE LOMBARDO, et al.,

Defendants.

Case No. 2:15-cv-01943-RFB-CWH

ORDER

Presently before the court is Plaintiff Francisco Vidal's application to proceed *in forma pauperis* (ECF No. 3), filed on January 28, 2016. Plaintiff Sandra Scharas did not file an application to proceed *in forma pauperis*. Plaintiff Vidal is an inmate in the custody of High Desert State Prison. Based on the pleadings, it does not appear that Plaintiff Scharas is incarcerated. The Plaintiffs are represented by an attorney, who filed the second amended complaint (ECF No. 4).[1]

[1] The court notes that once the matter of the filing fee is resolved, this case is not subject to screening because Plaintiffs are represented by an attorney. Title 28 U.S.C. § 1915A provides that the court must "review . . . a complaint in a civil action in which a prisoner seeks redress from the governmental entity or officer or employee of a governmental entity" and "shall identify cognizable claims or dismiss the complaint, or any portion of the complaint" if it is "frivolous, malicious, or fails to state a claim upon which relief can be granted" or if it "seeks monetary relief from a defendant who is immune from such relief." Section 1915A does not differentiate between represented and unrepresented prisoners with regard to screening, and there is no authority addressing this issue. However, given that the purpose of § 1915A is to prevent defendants from having to respond to frivolous or malicious lawsuits and to conserve judicial resources by dismissing these types of cases at an early stage, the court typically does not screen prisoner civil rights cases in which the prisoner is represented by an attorney. *See Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th Cir. 2014) (stating that the "purpose of § 1915A is to ensure that the targets of frivolous or malicious suits need not bear the expense of responding" (quotation omitted)); *O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008) (explaining that the Prison Litigation Reform Act's screening provision was intended to "conserve judicial resources by authorizing district courts to dismiss nonmeritorious prisoner complaints at an early stage"). Additionally, in cases in which a prisoner is represented by an attorney, the attorney's obligations under Rule 11 of the Federal Rules of Civil Procedure substantially reduce the incidence of frivolous prisoner civil rights claims.

Given that Plaintiff Scharas did not file an application to proceed *in forma pauperis*, the court is unable to evaluate whether the Plaintiffs are unable to pay the filing fee in this case. Additionally, given the court's current case load, a significant period of time has passed since Plaintiff Vidal filed his application to proceed *in forma pauperis*, and the court therefore is unable to evaluate Plaintiff Vidal's current financial status. The court therefore will deny Plaintiff Vidal's application to proceed *in forma pauperis* without prejudice, and will require both Plaintiff Vidal and Plaintiff Scharas to file applications to proceed *in forma pauperis*.

IT IS THEREFORE ORDERED that Plaintiff Francisco Vidal's application to proceed *in forma pauperis* (ECF No. 3) is DENIED without prejudice.

IT IS FURTHER ORDERED that the Clerk of Court must mail to Plaintiffs' attorney an application to proceed *in forma pauperis* for inmates, as well as an application to proceed *in forma pauperis* for non-inmates.

IT IS FURTHER ORDERED that by June 16, 2017, Plaintiffs must either (1) individually complete applications to proceed *in forma pauperis* and file them with the court, or (2) pay the filing fee of $400.00. Plaintiffs are advised that failure to comply with this order may result in a recommendation that this case be dismissed without prejudice.

DATED: May 17, 2017

C.W. Hoffman, Jr.
United States Magistrate Judge